"Education Regulations: Federal Overreach into Academic Affairs"

Testimony of G. Blair Dowden
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Subcommittee on Higher Education and Workforce Training
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Good morning Chairwoman Foxx and Ranking Member Hinojosa:

I appreciate your invitation to share my concerns about the "program integrity issues" regulations. My name is Blair Dowden, president of Huntington University in Huntington, Indiana, and I have served in that capacity for the last twenty years. I am a past Board chair of the Council for Christian Colleges and Universities, and I presently serve as a Board member of the National Association of Independent Colleges and Universities. I want to share my concerns with you today as the president of Huntington University — a private, accredited, four-year, Christian liberal-arts university and an institution whose religious character and mission is central to everything we are and everything we do.

As a president of a private college, I am concerned about many specific facets of these regulations, but I am also concerned generally about the wide sweeping regulatory overreach that these regulations signal. As private institutions of higher learning come under ever-increasing regulatory burdens, we find fewer and fewer differences in the level of government involvement between our institutions and our public counterparts. The American higher education system is the best in the world largely because of its independence, innovation and creativity.

I believe that these regulations work to undermine, rather than strengthen, those valuable characteristics.

Specifically, there are two parts of these regulations that are most concerning: state authorization and credit hour, the topics of this hearing. I strongly believe that the new regulations will elevate the level of involvement by the state and federal governments and significantly impact one of the hallmarks and strengths of the U.S. higher education system, institutional autonomy.

I am not endorsing the premise that institutions should not be held accountable for their work and the expenditure of federal funds. In fact, earlier this year, Huntington University was visited by the US Department of Education for a routine review of our Title IV programs. After a week of review, the Department representatives indicated that we were a "very clean" operation in the management of Title IV funds. This type of oversight is appropriate. But the dramatic increase in regulation and oversight that is contained in some provisions of the Department's new program integrity regulations is not warranted and will severely burden our colleges and universities.

One specific concern is the federal definition of the credit hour which inserts the federal government squarely into one of the most sacrosanct elements of higher education. Because of the diversity of institutions, programs, and methods of the delivery of academic content, I believe that it is very problematic for the federal government to impose one standard definition for and implementation of a credit hour. The effort to transform the credit hour into a simple accounting unit used for bookkeeping, shows, I believe, a fundamental misunderstanding of the credit hour. A credit hour is not only different from institution to institution, but is different even within an institution from program to program. A scientific laboratory class is different from practicing a

musical instrument which is different from engaging in a business practicum. I strongly believe that it is colleges, universities and accrediting organizations — not the government — that are best able to assess and quantify the learning that results from these varied experiences.

In recent decades, there has been significant innovation in higher education, especially for adult learners. Accelerated classes, distance learning, and hybrid format classes have opened up doors of educational opportunity and attainment for new groups of students. A restrictive definition of credit hour based on seat-time alone would turn back the clock and discourage the kind of innovation that enables colleges and universities to serve these students. It is one thing to measure how much time a student spends in a classroom; it is quite another to measure how much the student learned. As Sylvia Manning, president of the Higher Learning Commission testified to the House Committee on Education and Labor on June 17, 2010, a narrow definition of credit hour would not be particularly useful in measuring the learning outcomes of adult students or alternative delivery systems. It would deter innovation in higher education and "require that colleges and universities divert resources away from helping students to demonstrating compliance with the regulation." Imposing a federal definition of a credit hour would usurp the role of accrediting organizations without effectively measuring or improving academic rigor, program quality, or learning outcomes.

Huntington is a private liberal-arts university; we are also a Christian institution. Our Christ-centered mission is foundational to our educational purpose and informs every decision that we make. As president, I am also concerned that these new regulations have potential to interfere with our faith-based mission.

In particular, the state authorization component of these regulations expands on the requirement that an institution must be authorized by a State in order to participate in Title IV funding. State authorization is currently required by the Higher Education Act, and it is not at all clear to me what value would be added by these new—and confusing—requirements. However, this clearly opens the door to have states impose requirements that go well beyond authorizing an institution to offer postsecondary education. My concern is that there appear to be no limits to what factors a state can consider when granting or withholding authorization, and no mechanisms for appeal or due process.

For instance, what if an institution were denied state authorization because of a practice stemming from its religious mission? This would disqualify the college or university from participation in Title IV programs. As the president of a Christian institution, I am acutely aware that religion and religious practices can sometimes invoke strong reactions in people, reactions that can sometimes motivate certain political positions and actions opposing religious practices and institutions. That is why prior higher education legislation has contained strong religious exemptions. The Department's new regulations, however, do not actually create a religious exemption. Instead, they delineate a very small category of institutions that are eligible to be exempted under state law, if the state should choose to do so. This category of schools eligible for a state religious exemption is so narrowly defined that Huntington University and schools like us would not qualify. In fact, not one member of the Council for Christian Colleges and Universities would qualify for an exemption as outlined by the new regulations.

This prospect is very troubling and is widely shared as a concern by my fellow Christian college presidents. I do not want to have our students' eligibility to receive Title IV funding placed solely in the hands of a political state entity, with no possibility of religious exemption.

In addition, the possibility exists that certain states may use this new state authorization leverage to achieve their own higher education policy agenda at the expense of the mission of the institution. For instance a state could require certain curriculum or textbooks in order to gain authorization, violating both the academic prerogatives and religious convictions of the institutions. This would have the effect of putting colleges and universities in the position of choosing between state authorization and the ability to freely engage in their religious missions.

According to some legal analysts, my state of Indiana is one of several states that would not be in compliance with the Department's regulations concerning state authorization. Although Huntington University has operated effectively for more than a century, new legislation might be needed to establish the state authorization required by these new regulations.

My institution was founded in 1897 and has always been recognized by the state, and was formally authorized by statute since 1965. There has never been a problem or question about its authorization. Although the Department's new regulations require it, my state never saw a need to write institutional names into the law. It is unfortunate that, through a seemingly small requirement, the new rules open the potential for the state to take these new requirements as an opportunity to involve itself in areas that have not been the purview of the state before, such as curriculum or institutional mission.

The Department's regulations require additional state regulation and oversight, without any offsetting reduction in federal regulation or oversight. The burden of compliance will increase, driving up costs. The price of higher education goes up when layers of government create well-intentioned but burdensome rules and regulations. Every dollar

spent on compliance is a dollar that is not being spent on educating a student to succeed and contribute to society.

This scenario brings to mind past experience with the 1992 reauthorization of the Higher Education Act. The legislation required the establishment of a State Post Secondary Review Entity, or SPRE, in every state. While the effort was trumpeted as a way to increase accountability in higher education, the actual result was the multiplication of state and federal intrusions into the operations of colleges and universities. The SPRE concept severely eroded the independence of private colleges and universities and led to, in the words of one commentator, "haphazard and capricious regulatory enforcement."[i] In 1994, the Department of Education notified nearly 2,000 institutions that they had failed to meet certain criteria. SPRE was fiercely opposed by those who championed a smaller, less intrusive federal government. Fortunately, Congress defunded the SPRE project and ended implementation in March 1995.

Now, in 2011, it appears we are heading down the same misguided path with the new regulations promulgated by the Department of Education and due to be implemented in July.

Let me conclude by assuring you that my concerns are not intended to deny the need for accountability and excellence in higher education, or out of a concern that Huntington University would not meet quality standards. To the contrary, Huntington University has a proven track record with the Department of Education, with our accrediting organization, and with third-party observers such as *U.S. News & World Report*, which ranks Huntington among the Midwest's top ten regional colleges and among the region's top five best values. Huntington University is providing our students with an excellent education and equipping them for the future.

Rather, I oppose these regulations because they unnecessarily interfere with the good work that my institution and many others are doing, because they have the likelihood of raising costs without delivering value to students, and because they create the potential for misunderstanding, misapplication, and even mischief by politically motivated state actors.

I appreciate your time here today and look forward to answering your questions.

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[i] David L. Warren "Why Faculty Should Care about Federal Regulation of Higher Education," *Academe*, July-August 1994: 19, cited in Terese Rainwater, "The Rise and Fall of SPRE: A Look at Failed Efforts to Regulate Postsecondary Education in the 1990s," *American Academic*, March 2006: 107.